CHAPTER II
CONTROL OF DRUG ABUSE IN INDIA
CHAPTER XI

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Cannabis and opium had been the only narcotic drugs abused in India till the mid-twentieth century. The use of cannabis started around 1000 B.C. in the religious ceremonies. Gradually, cannabis also became a part of the Ayurvedic and Unani systems of medicine. Sometime later, 'ganja' - a cannabis product - came to be widely used by ascetics and religious mendicants for achieving religious hallucinations. Its use in rituals, performed in some of the Hindu temples particularly during festivals such as Shivaratri and Holi, has continued unabated till today.

The concern in Britain about the rampant cannabis abuse in India led to the appointment of Indian Hemp Drugs Commission in 1893. The Commission recommended for measures to restrict the use of cannabis, and consequently, Act XII of 1896 was passed enabling the government to take control of its cultivation. The cannabis cultivation thus came under licencing control of the state governments.

The import and use of cannabis product 'charas' was prohibited by the Government of India in 1935. The restriction on manufacture, sale and consumption of 'ganja' too had been imposed in most of the States by 1961. However, a few States e.g. Madhya Pradesh and Orissa had not imposed total prohibition on its use for non-medical purposes till 1989, when notifications were issued by the Central Government under Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985,
to impose prohibition on cultivation of 'ganja' throughout India with effect from the 15th May, 1989, and on its production, possession, sale, consumption, and use etc. with effect from the 13th December, 1989.

In spite of the legal restrictions, 'ganja' continues to be grown illegally in Kerala, Karnataka, Tamil Nadu, West Bengal, Manipur, and Nagaland. Apart from the local illicit cultivation, large amounts of 'ganja' and 'charas' are also smuggled into India from Pakistan and Nepal. Out of the total quantity of 'charas' seized by the law enforcement agencies in the country, 15.45 percent in 1983, 49.40 percent in 1984, 38.53 percent in 1985, 84.4 percent in 1988, and 52.57 percent in 1991, were of Pakistan origin.

The quantities of 'ganja' and 'charas' seized throughout the country by the enforcement agencies during the last 10 years are indicated in the following Table:

**TABLE No. 2.1**

**Quantities of 'Ganja' and 'Charas'**

**Seized During 1983-1992**

(All in Kgs.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Ganja</th>
<th>Charas</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>21,685</td>
<td>6,072</td>
</tr>
<tr>
<td>1984</td>
<td>21,208</td>
<td>4,368</td>
</tr>
<tr>
<td>1985</td>
<td>66,314</td>
<td>10,312</td>
</tr>
<tr>
<td>1986</td>
<td>60,619</td>
<td>18,909</td>
</tr>
<tr>
<td>1987</td>
<td>53,920</td>
<td>14,796</td>
</tr>
<tr>
<td>1988</td>
<td>45,994</td>
<td>17,390</td>
</tr>
<tr>
<td>1989</td>
<td>54,463</td>
<td>8,179</td>
</tr>
<tr>
<td>1990</td>
<td>39,090</td>
<td>6,368</td>
</tr>
<tr>
<td>1991</td>
<td>52,633</td>
<td>4,413</td>
</tr>
<tr>
<td>1992</td>
<td>63,438</td>
<td>6,621</td>
</tr>
<tr>
<td>Total</td>
<td>4,79,364</td>
<td>97,428</td>
</tr>
</tbody>
</table>
No definite trends in the trafficking of 'ganja' or 'charas' are discernible from the Table No. 2.1, except that there is a decline in the seizures of 'charas' since 1988. This decline is attributable, according to the government sources, to the diversion of transit of 'charas' of 'Golden Crescent' origin to the Balkan route.

According to the recent studies sponsored by the Union Government, cannabis products remain the most widely abused drugs in the country, followed closely by heroin.

OPium Abuse

There is no mention of poppy or opium in the ancient religious books of the Hindus, or in the books of Indian medicine by Charaka, Sushruta and Vaghabatt. However, there is a reference to opium in the works like 'Sharangadhar Samhita' and 'Bhavaprakash' believed to have been written in the 14th and the 16th century respectively. There is also a reference to opium in 'Ain-i-Akbari' written by Abul-Fazl during the reign of Akbar. These facts lead to the hypothesis that opium came to India during or just before the beginning of the Mughal period.

In the Mughal period, opium became very popular in India due to the belief that it could take care of sex-deficiencies. Gradually, poppy cultivation picked up so much that a proposal was made in a meeting of the council of representatives of the East India Company held at Calcutta in 1767 for export of opium from Bengal to China. In 1773, the East India Company took over the monopoly of all the opium produced in Bihar, Bengal and Orissa.
Warren Hastings encouraged the opium trade for foreign commerce only while advising restraint from internal consumption of opium. Lord Earl Cornwallis started the system under which the cultivation of opium poppy was permitted only under licence from the government, and the sale of opium was also controlled by it. The Opium Act, 1857 and the Opium Act, 1878 had been enacted later primarily for the purpose of regulating the cultivation of poppy and manufacture of opium, and subjecting these activities to strict government control. The same system continues till date although these Acts have since been replaced by the Narcotic Drugs and Psychotropic Substances Act, 1985.

The Royal Commission on Opium, appointed by the British government in 1893, found that while smoking of opium was rare in India, it was being used for oral consumption and for doping of children. Referring to the ceremonial and social uses of opium, the Commission opined that it would be impracticable to prohibit its use. Accepting these recommendations, the government decided not to delegitimize the cultivation of poppy or the manufacture and sale of opium. However, opium trade with China came to an end in 1906, when the British House of Commons passed a resolution declaring that such trade was morally indefensible.

In 1924, the All India Congress Committee passed a resolution condemning the opium policy of the government.
Consequent upon signing of the Geneva Convention, 1925 by India, the Dangerous Drugs Act, 1930 was passed. However, no restrictions were imposed on the consumption of opium. In 1946, the government decided to prohibit the use of opium. Exception was, however, made in the case of existing addicts as long as they survived and subject to their producing requisite medical certificate.  

In the Second and the Third All India Narcotics Conferences, held in 1956 and 1959 respectively, it was decided that non-medical and quasi-medical use of opium should be absolutely prohibited except for the persons requiring consumption of opium on medical grounds, and registering themselves before the 31st March, 1959. Consequently, all the excise opium shops and vendors were closed, and it was decided by the government to supply opium to the addicts, who had registered themselves by that date, through the state government treasuries.

The number of opium addicts has not shown any downward trend in spite of the legal prohibition. Even today, there is a social custom of distributing large quantities of opium to the guests at marriages in most parts of Rajasthan. In many other places in the country, working women engaged in unskilled or semi-skilled jobs have been giving opium to the children in order to make them sleep during their absence from home for work.
Illicit diversion of opium from the government licenced poppy cultivation as well as the clandestine cultivation of poppy in the remote areas, are the sources of supply of opium to the addicts.26

Licenced cultivation of poppy

The opium poppy is cultivated under licence from the Central Government in Madhya Pradesh, Rajasthan and Uttar Pradesh. This cultivation is essentially for the purpose of meeting the medical requirements in the country as well as in the rest of the world.

India is the largest supplier of licit opium to the world. In fact, a major portion of opium produced is meant solely for export. Due to the large accumulation of unused opium stocks in the government opium factories over the years, the export of opium from 1989 onwards, has exceeded the yearly production. In 1989-90, the production was 437 tonnes while the export was to the tune of 555 tonnes.27 Similarly, in the years 1990-91 and 1991-92, the production was 392 tonnes and 495 tonnes respectively, while the export was of 850 tonnes and 617 tonnes respectively.28 The major purchasers are USA, UK, Japan and CIS member States.

Opium used indigenously is converted to morphine and other alkaloids in the Government Opium and Alkaloid Factories at Neemuch and Ghazipur.
Narcotics Commissioner of India is the chief controller of the cultivation and manufacture of opium. The area to be put under cultivation is determined every year after ascertaining the medical and quasi-medical requirements within India, and also the export requirements. The area under such cultivation is being progressively reduced every year. In the crop year 1977-78, the area under cultivation was 63,684.70 hectares and the quantity of opium produced was 1646 tonnes at 90° C. In the crop year 1991-92, the area under cultivation was 14,361 hectares, and quantity of opium produced was about 495 tonnes.

Each licenced cultivator is allowed to grow poppy on one-tenth of a hectare of land. The number of licenced cultivators during 1991-92 was 1,42,295. The licence is renewed every year after examining the yield of the cultivator during the previous year. The minimum yield of opium per hectare is predetermined by the government in order to prevent the cultivator from withholding any part of the yield for sale in the black-market. The opium produced by the cultivator is collected by the government officials, and he is paid according to the quantity and quality of the opium tendered. During 1991-92, the cultivator was paid Rs.175 per Kg. if the average yield in the area cultivated by him was up to 34 Kgs. per hectare. However, if the average yield was more than 34 Kgs. per hectare, the cultivator was paid at a higher rate of Rs.205 per Kg. The higher rate was prescribed as an incentive to the cultivator to tender higher yield to the government so that diversion of opium to illicit market might be curbed.
Opium in blackmarket

The government agencies affirm that no illicit diversion of opium from the licenced fields is possible due to strict controls. However, most of the independent sources agree that such diversion is a regular phenomenon. The reasons for such illicit diversion are easy to identify.

While the government pays an average of Rs. 200 per Kg. to the cultivator, the price in the illicit market is Rs. 6,000 or so per Kg. This enormous profit margin in illicit sale is too attractive for the cultivator to ignore. Presuming that the average yield is 44 Kgs. per hectare as claimed by the official agencies, a cultivator produces only 4.4 Kgs. of opium since the maximum area allowed to be cultivated per licence is mere one-tenth of a hectare, and he will get less than Rs. 950 from the government. He can, however, retain the straw and seeds which may fetch him Rs. 5000 or so. The cultivator has to go through the tedious process of getting his licence renewed every year, and remains under the constant supervision of the government officials. He also risks prosecution and penalties if there is any theft or shortage in the opium produced by him. In addition, he invests money and labour in the cultivation. It appears difficult to assume that a cultivator will do all this for the little money that he can legitimately earn in the end.
Another reason behind illicit diversion is that there are many remote villages which have one or two licenced poppy fields, and it may be difficult to exercise proper control over such fields.

The licenced cultivators have been resorting to illicit diversion of opium since long as is evident from the report of the Drug Addiction Committee (1977) appointed by the Government of India. The Committee had observed: "There is reason to believe that a good deal of opium escapes from the cultivating regions to the other parts of the country. The cases detected are few and they seem to account only for a small portion of leakage that actually takes place."

The reports appearing in the Indian press from time to time suggest that up to 40 percent of the licitly produced opium is diverted to the blackmarket.

The United States government has often stated that if the diversion of opium to illicit market was not checked in India, it would be forced to cut down aid to India, and may even stop purchasing opium from this country. In its International Narcotic Control Strategy Report (1991), The Bureau of International Narcotics Matters, United States Government, observed:

"Diversion of licit opium and unlicenced cultivation in licit growing areas, as well as illicit production in remote areas of North-East
India and the Himalayas, continues to occur. The Government of India considers illicit diversion to be less of a problem than heroin smuggling from neighbouring countries. United States government officials estimate that 20 to 30 percent of the annual licit production may enter illicit channels for domestic consumption as opium or smoking heroin.39

The Bureau observed further:

"During the Assistant Secretary's visit, the Government of India promised a new monitoring system for licit opium production, the "fencing off" of growing areas, a large increase in personnel, and more closely coordinated Government of India controls and checks at the state level. Little has been done.40"

It its 1992 Report also, the Bureau of International Narcotics Matters has again noted that from 10 percent to 30 percent of the total opium yield in India is diverted to illicit market.41

The government sources in India, however, do not agree with the aforesaid reports of the U.S. government agencies. According to these sources, the reports of large-scale leakage of opium are engineered or supported by some powerful lobbies in the United States who have been trying to persuade their government to do away with the "80-20 Rule" under which USA is obliged to import 80 percent of their requirement of opium from India and Turkey. Some opiate manufacturing companies
in USA, according to these sources, are interested in purchase of poppy straw concentrate from Australia instead of opium from India.

In its report released on 15th February, 1993, the International Narcotics Control Board, a United Nations agency, too has corroborated the allegations of illicit diversion of opium, in the following words:

"Diversion of licit opium into illicit channels has been attributed to the fact that licit cultivation in India is spread over a wide area and about 149000 cultivators are licenced. Another factor is that farmers' income is low and many of them are attracted by the high prices offered by illicit traffickers."

The average yield of opium at 70°C per hectare in 1991-92, based on the quantity tendered to the government, was 44.4 Kgs. for Madhya Pradesh, 46.58 Kgs. for Rajasthan, and 40.33 Kgs. for Uttar Pradesh. The reports appearing in the press from time to time suggest that the actual yield ranges between 70 to 80 Kgs. per hectare at 70°C. Assuming the average yield to be 70 Kgs. per hectare, the estimated quantity of opium diverted to the illicit market was 365 tonnes i.e. 36.68 percent of the actual production in 1991-92.

Illicit cultivation of opium poppy is also taking place in the remote areas of Uttar Pradesh, Madhya Pradesh, Rajasthan and Himachal Pradesh with the alleged connivance of the law enforcement officials. Poppy has also been
cultivated illicitly since long in many parts of the north-east region, particularly in the tribal dominated areas of Arunachal Pradesh.

**ABUSE OF OPIUM DERIVATIVES ETC.**

There was virtually no heroin addiction in the country before 1980. However, the current number of heroin abusers is about 10,000,000. Throughout the 80s, India remained a major transit country for smuggling of heroin from the 'Golden Crescent' and the 'Golden Triangle' to North America and Europe. During the same period, illicit laboratories for conversion of opium to 'brown sugar', a crude form of heroin, also sprung up in the opium growing areas. These factors have led to the easy availability of heroin in the country, and consequent epidemic rise in its abuse.

There is no evidence of any noteworthy increase in the abuse of morphine or other opium derivatives.

There is no significant abuse of cocaine, LSD, or methaqualone in the country. However, large quantities of methaqualone are illicitly produced in the country, but these are meant basically for smuggling to Africa. No study about the rise or decline of abuse of tranquillizers, sedatives or other psychotropic substances in the country has been made so far.

Quantities of various drugs (other than 'ganja' and 'charas') seized throughout the country by the enforcement agencies in the last 10 years are indicated
As indicated by the Table No.2.2, there has been a gradual decline in the quantities of opium seized from 1987 onwards, except in the year 1989. The government sources have not put forward any explanation for this trend. It appears that due to the sealing of the Indo-Pak border in the wake of terrorist activities in Punjab, the smuggling of opium of Pakistan origin may be on a low ebb. Secondly, the proliferation of illicit laboratories for conversion of opium to crude heroin, might have made it preferable for drug traffickers to deal in crude heroin instead of opium which is comparatively less profitable.

The seizures of morphine and cocaine are too small in quantity to reflect any definite trends.
The declining seizures of heroin since 1988 are, according to the government sources, attributable to the diversion of transit of heroin of the Golden Crescent origin to the Balkan route. While the switch-over of heroin smuggling to this route cannot be denied, this factor alone is not significant in view of the fact that the number of heroin addicts in the country is on the increase, which by itself points out to the easy availability of this drug in the illicit market.

The gradual increase in the seizures of methaqualone is attributable to the large-scale clandestine manufacture of this drug for smuggling to Africa, as mentioned earlier.

It is clearly discernible from Tables 2.1 and 2.2 that the largest seizures of most of the drugs (except methaqualone) were in the year 1986. It appears that this was the result of enthusiasm generated amongst the enforcement agencies by the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985. Gradually, these agencies started losing interest in the enforcement of this Act as it has proved to be a damp squib, as discussed in the subsequent Chapters in this work.

CAUSES OF DRUG ABUSE

United Nations considers the identification of the causes responsible for drug abuse to be one of the greatest obstacles in combatting this menace. No single factor is exclusively and necessarily associated with drug abuse. A person may become dependent on drugs for diverse reasons, and the search for some
all-embracing explanation is doomed to failure.\textsuperscript{54}

The reasons for spread of drug abuse in India are not necessarily the same as in the other countries. It will be beyond the scope of this study to go into each and every factor believed to be responsible for drug use. Therefore, only the major contributory factors, particularly in the Indian context, are briefly analysed here:

**Easy availability of drugs**

A person takes any drug initially just to see "what it's like", and this phenomenon may be termed as 'curiosity.' According to Macdonald, the adolescents have "traits of adventurousness and willingness to test danger that make them particularly susceptible to drug use."\textsuperscript{55} However, peer group pressure will have a great impact on whether or not a person experiments with a drug out of curiosity.

Recent studies sponsored by the Union Government also have established that peer pressure and curiosity are the main factors behind drug abuse in the country.\textsuperscript{56} After the curiosity is satisfied, a person may either never take the drug again or keep on repeatedly using it, as the drug-induced state of consciousness is generally a pleasant experience.\textsuperscript{57} A number of factors are responsible for individual decision-making at this stage. The most crucial factor, however, is whether drugs are easily available or not, for ongoing use. According to Paul Fuqua, it is true that a person who has already become dependent on drugs
will go anywhere in search of drugs but "these people are exceptions rather than a rule". For most of the other people, according to him, drug abuse is "an occasional sort of thing, a take-it-or-leave-it phenomenon" and "if the drugs are readily available they will use them or experiment with them; if not, they will not".

Due to the inefficient law enforcement, illicit drugs remain easily available throughout the country. In addition, the legal channels for supply of psychotropic substances for medical purposes are also fast becoming a major source of unrestricted illicit supply of these drugs to the existing as well as the potential drug abusers, due to the lax control over the chemists and druggists who are under a legal obligation, by virtue of the Drugs and Cosmetics Rules, 1945, to sell prescription drugs only to the persons holding valid prescription. Thousands of retail-outlets and peddlers cater to the growing population of over 25 lakh drug abusers. So much so that drugs are freely available even in the jails. In 1992, the official sources have been quoted as saying that at least 600 inmates of the maximum-security Tihar Jail in Delhi took narcotics regularly, and most of them were addicted to heroin. On 28th March, 1992, 35 gms. of crude heroin was reportedly seized from five undertrials in the said jail. Till easy availability of drugs is prevented, more and more people will have the opportunity of experimenting with such drugs, and adding to the number of existing drug abusers.
Complacent attitudes

In India, the people in general remain unconcerned about drug abuse due to lack of adequate drug information and education. The complacent attitude of the government and other agencies towards drug abuse in the recent years was based on the belief that India was only a transit country for flow of drugs from the 'Golden Triangle' and the 'Golden Crescent' to the United States and Europe.\(^6^3\)

The budget allocations for the prevention of drug abuse and rehabilitation of the existing addicts reflect the low priority being accorded to this problem even at present. In the Eighth Five Year Plan, the total amount earmarked for the purpose is only around Rs.130 crores.\(^6^4\) In 1993-94, a meagre amount of Rs.13.8 crores has been allotted in the Union Budget on this account.\(^6^5\)

Lack of any national strategy to fight the menace of drugs is a significant factor behind the failure to check the growing number of drug abusers in the country. A Narcotic Drugs and Psychotropic Substances Consultative Committee was constituted by the Government of India in 1988 in terms of Section 6 of the Narcotic Drugs and Psychotropic Substances Act, 1985. However, there is no report of this Committee having formulated any national policy on the subject so far. On the other hand, the Anti-Drug Abuse Act, 1988 was passed in USA with a view to create Office of the National Drug Control Policy, a new executive branch agency, entrusted with the job of developing
a comprehensive national strategy to control drug abuse. This agency submits its strategy report every year to the US Congress. A study of its annual reports shows that the agency has made a significant contribution in checking drug abuse by determining the national priorities in the areas of criminal justice, drug treatment, education and community action, and international efforts at drug control. There is a need for creating a similar agency in India.

Parental Role

It has been observed by the researchers that unregulated use of sleeping pills, tranquillizers, weight reducing drugs and alcohol by the parents often promotes drug abuse by the children. Richard Barrymore observes:

"Over a third of middle-aged women and many young mothers were taking tranquillizers two or three times a day because they felt nervous or irritable usually due to tension from underlying boredom at home or unhappiness in their marriage. Youngsters feel similar pressures and emotional reactions. It is very natural that they too should feel they can resort to a boost or a sleeper to smooth out their moods, rather than to have to sweat these out naturally".

In fact, we are too liberal in the use of drugs, legal or illegal. As rightly pointed out by Paul Fuqua, we take "drugs to put us to sleep, to get us up, to prevent
pregnancies, to induce pregnancies, to sharpen our wits, to dull our nerves, to stop our headaches, to regulate our bowels, to cure our diseases, to clear our sinuses, and to do just about anything else with our bodies that can be imagined. Obviously, this is not a healthy attitude for children to learn and mimic.

Due to the prevailing socio-economic conditions in the country, an average Indian family gets so engrossed in meeting the materialistic needs that there is hardly any emphasis on understanding the children and fulfilling their genuine desires. This necessarily results in the children getting neglected and frustrated. Such children are highly susceptible to the abuse of drugs.

There is also a noticeable decline in parental care of the children in the last two decades or so due to the fact that more and more mothers are getting full time employment outside the home. In metropolitan cities particularly, the employees have to commute long distances for reaching their work-place and for returning home. This may usually keep an employee away from home for about 12 hours in a day. The absence of both the parents from home for the major portion of the day leads to the psychological alienation of the child who feels neglected and bored. It cannot be denied that children nurtured in such an atmosphere will have great tendency to fall back on intoxicants.

A survey of drug abusers, conducted by the Drug Abuse Information, Rehabilitation and Research Centre, Bombay,
showed that 56 percent respondents did not have a father figure at home; out of which 11 percent had lost their fathers, 6 percent had mothers as dominant partners and 38 percent had fathers away from home due to being employed in a different city. It was also observed that 89 percent of the respondents had difficulty in communication with their parents.

In a nut-shell, the parents have to take a major part of the blame for their children becoming drug-dependent.

Social conditions

The Drug Abuse Council in USA observed in its report in 1980: "While not enough is known about why certain individuals misuse drugs, it is known that there is a definite correlation between pervasive societal ills—such as poverty, unemployment, and racial discrimination, and drug misuse. So long as these adverse social conditions persist, widespread drug misuse can be expected." A study of 160 brown sugar addicts in Delhi by Sharma (1987) showed that at the time of first use of the drug, 110 addicts were unemployed and had nothing to do, 45 had lost their jobs, 27 had collapsed business, 27 had disappointment in love relationship, and 21 had separated from their spouses (multiple responses in some cases). Recent government sponsored study in 33 cities throughout India also finds poverty and unemployment to be significant factors behind drug abuse.

The change from a rural agricultural society to an urbanized industrial society disorganizes the social values
as well as the social control mechanism. The migration of youth from rural to urban areas in search of employment or a better socio-economic status or just for receiving education is a normal phenomenon throughout the country. Such people are not often used to the stresses and strains that they have to encounter during this new exposure. They are forced into a life of isolation, deprivation, loneliness and despair. Being away from their families and traditional moral values, they are tempted to find solace in drugs and alcohol.

The modern urban society has also contributed a great deal to the problem of drug abuse. The mad race for material prosperity, commercialised entertainment, breaking down of religious and moral values, and dwindling respect for elders, have all resulted in distortion of traditional family system, and making the youth more prone to drug use. Harvey Teff opines: "In a world where Man's survival is precarious, yet at the same time potential achievements seem limitless, the 'non-achievers' are more susceptible to the attractions of drug". 74 He also quotes Downes, an expert on the subject, as saying that although we can not explain the causes of addiction satisfactorily yet "we know enough to say that an affluent and highly competitive society produces strains and anxieties, dissatisfaction and unhappiness which leads many people to look for an avenue of release other than the traditional ones of alcohol and tobacco". 75
Lack of treatment facilities

Every untreated addict is a source of drug abuse among his friends. Whenever a person indulges in repeated wrongful conduct of any nature whatsoever, it gives him a lot of satisfaction to see others indulging in similar conduct. It may be a natural tendency amongst human beings to justify their own sinful conduct on the ground that they were not alone in the act. Many a time, an addict will thus encourage his peer-groups to try drugs. A survey conducted by the Drug Abuse Information, Rehabilitation and Research Centre, Bombay found that out of 235 heroin addicts interviewed, 212 addicts had been introduced to the drug by friends, and all of them had received their first dose free of cost. Basing his observations on the studies made in USA, Anglin reports that one-third of the addicts support their habit through some form of participation in the drug distribution system.

It is, therefore, absolutely essential that existing addicts should be persuaded by counselling to undergo treatment. However, the lack of adequate facilities in the country for this purpose greatly hinders efforts aimed at prevention of drug abuse. This subject is dealt with in detail in Chapter IX in this work.

FACTORS BEHIND ILLEGAL TRAFFICKING

A large number of factors may be responsible for the increase in drug trafficking in the country. Looking to the intent and purpose of this study, a brief analysis only of the major contributory factors is being done here.
Geographical location

India is sandwiched between the 'Golden Triangle' and the 'Golden Crescent', world's largest opium-growing areas. Therefore, it has acted as a convenient transit point for trafficking of drugs, heroin in particular, from these areas to North America and Europe. It is extremely difficult to intercept drugs at entry point as the Indo-Pakistan border alone is about 3310 Kms., while Indo-Myanmar border stretches to another 1600 Kms. In addition to the drugs entering through these porous international borders, a long stretch of 1568 Kms. Indo-Nepal border is also highly prone to smuggling of 'ganja' from Nepal to India.

On the Indo-Myanmar border, the members of hill tribes of both the countries i.e. India and Myanmar can go upto 40 Kms. in the other country without any passport or immigration formalities. They are permitted to carry headloads of food items like rice and vegetables with them for trading in the other country. Heroin is often smuggled from Myanmar into India in small quantities concealed in these goods or in the clothes of the persons carrying on such trade. This is also one of the primary reasons for the deteriorating drug abuse situation in Manipur, Nagaland and Mizoram.

The Balkan route from Afghanistan to Europe was not operative since the late 1970s as Ayattolah was in power in Iran and the Soviets were in occupation of Afghanistan.
The route has reopened since 1991. Therefore, India has lost much of its importance as a major transit country for heroin. However, the local consumption of illicit drugs has gone up so much that this factor has not made any major impact on drug trafficking within the country.

Political and bureaucratic Structure

Political and bureaucratic structure in the country breeds crimes of all sorts for its own survival and prosperity. Enormous sums of money are required by candidates for contesting the elections. The tax-evading industrialists, touts of industrial and economic power, suppliers of sub-standard goods and services to the government at exhorbitant prices, drug traffickers, smugglers and criminals are some of the major sources of this money. The power-hungry bureaucrats become the willing tools in the game on the condition of reciprocity.

High profitability

At present, illicit drug trade is probably the fastest-growing and most profitable industry in the world. In India too, drug trade generates enormous profits. Heroin is, for example, available for an equivalent of rupees one lakh per Kg. in neighbouring Myanmar and Pakistan. In the border states of India, it is traded for Rs.2 lakhs to Rs.4 lakhs per Kg. On reaching the exit points at Calcutta, Madras, Bombay or Delhi, its price goes up to Rs.10 lakhs per Kg.
In the international market, it may fetch a price around Rs. one crore per Kg.

**Insurgency and terrorism**

Many insurgent organizations and terrorist groups throughout the world depend on drug trafficking to mobilize resources. There are also instances where some of these organizations abandoned their objective ultimately and switched on entirely to drug trafficking. In India too, there have been widespread allegations of some terrorist groups indulging in drug trafficking. It is also suspected that Pakistan may be encouraging the flow of narcotics into India with the objective of financing the terrorist activities in this country. On the whole, the impact of insurgency and terrorism on drug trafficking at the moment appears to be insignificant with the decline of insurgent and terrorist movements in the major part of the country.

**Ineffective enforcement**

Gauging by the reports appearing in the media during last eight years, the king-pins behind drug trafficking operations in the country, even if arrested and prosecuted, rarely get convicted or imprisoned due to the numerous loop-holes in the drug laws. The enforcement machinery too suffers from various handicaps, and has largely been ineffective in bringing the culprits to book. Preventive detention laws have also failed to make any impact on the drug scenario.
The conviction rate in respect of persons arrested for various drug offences is well below 10 percent. Therefore, the law has, on the whole, little deterrent effect on the prospective drug traffickers.

**ESTIMATED NUMBER OF DRUG ADDICTS**

No authentic figures about the extent of drug abuse in India are available. There is a wide divergence of opinion among experts about the number of current drug abusers in the country.

Published works on the subject by the Indian authors place the estimated number of drug abusers between eight lakhs to one crore. Lobo (1986) puts this figure at 25 lakhs, Mallik (1991) at 8 lakhs, and Bhim Sain (1992) at about one crore. According to Merchant and Dorkings (1991), the number of heroin addicts alone is over 7.5 lakhs.

Government sources estimated the number of drug abusers to be about 20 lakhs in 1992. In 1989, the Ministry of Welfare had sponsored research studies in 33 cities to make assessment of the current trends in drug abuse. The summarised reports published in 1992 make no estimate about the total number of drug abusers in the country as a whole. The number of drug abusers registered with various de-addiction, counselling and after-care centres in the country is 9.34 lakhs, as of June, 1993.
According to a survey conducted by a United Nations agency in 1992, India had an estimated number of 10 lakh opium and heroin abusers. A PTI report in 1990 from Kathmandu, relying on estimates by the Royal Institute of Regional Studies in Nepal, had put the number of addicts in India between 30 lakhs to 50 lakhs. A UNI report from Dhaka in late 1992, relying on the estimates by experts from the SAARC countries, had estimated this number to be between 50 lakhs to 70 lakhs.

There is a broad consensus about the number of drug abusers in two states in India, namely West Bengal and Manipur. A survey made in 1991 by the Department of Applied Psychology of the Calcutta University, whose findings appear to be acceptable to the state government, revealed that the estimated number of addicts in West Bengal was 1,92,626 as on March 1, 1990. About Manipur, almost all sources agree that the number of heroin addicts was between 30,000 to 40,000 in 1992.

There is also a broad agreement among most sources, domestic as well as international, that the number of heroin abusers in India was between 7.5 lakhs to 10 lakhs in 1992. Looking to the fact that the number of cannabis abusers is higher than that of heroin abusers, and that there is also a large number of persons addicted to opium and other drugs, the total number of drug abusers in the country appear to be not less than 25 lakhs at present.
Without making any serious attempt to ascertain a reasonably correct number of drug abusers, and without close and constant monitoring of the changing patterns of drug abuse in the country, the government can not hope to be successful in its efforts to control this menace. It is, therefore, recommended that household surveys on a regular basis, on the pattern of these in the United States, should be conducted in India.

THE AIDS NEXUS

Drug abuse has contributed significantly to the spread of AIDS in the country as is evident from the fact that highest incidence of AIDS is found in Manipur which is also the state worst-affected by the menace of drugs.

By October, 1992, there were about 11,000 confirmed cases of HIV infection in India. According to the estimates by the centre for AIDS Research and Control, Bombay, India will have at least 50,000 full-blown cases and 10,00,000 HIV positive cases by 1995.

The seropositivity rates have increased from 0.25% amongst persons tested in December 1986, to 0.35% in December 1988, 0.52% in December 1990, and 0.72% in September, 1992.

Out of 14,61,722 persons screened for HIV infection from October 1986 till August 1992 in India, 0.7 percent were found to be HIV positive. The highest percentage of HIV positive cases was 15.94% in Manipur, followed by
11.16% in Nagaland, 2.94% in Maharashtra, 1.4% in Pondicherry, and 1.2% in Mizoram. In all other States, the percentage was below 1%, with Orissa and Bihar having no detected case of HIV positive.

The WHO estimates in 1992 put the number of HIV positive cases in India at 10,00,000.

The spread of HIV infection due to the intravenous drug abuse in North-East India, particularly in Manipur, has attracted the specific attention of the International Narcotics Control Board, a United Nations agency, which has observed in its latest report:

"The recent spread of intravenous heroin abuse in north-eastern India is of major concern to the Indian Government. The advent of intravenous drug abuse has been followed by the spread of HIV infection. Since 1989, when the first case involving HIV infection was registered, there has been a sharp increase in the number of such cases in the States of Manipur and Nagaland and in the territory of Mizoram. Recent studies have revealed that at least 50 percent of the heroin abusers in Manipur are HIV positive."

Looking to the fact that drug abuse is proving to be far more dangerous, particularly on account of AIDS, than it was perceived to be ten years back, there is need for an all-out effort to control the onslaught of this scourge.
**CONSTITUTIONAL AND INTERNATIONAL OBLIGATIONS**

Article 47 of the Constitution of India mandates that 'the State shall regard the raising of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health'. Apart from that, India is a signatory to all the major international conventions relating to drug abuse and illicit trafficking. Therefore, the international community too expects the country to meet its obligations under these conventions by making every possible effort to control drug abuse and illicit trafficking.

**ANTI-DRUG LAWS: AN OVERVIEW**

The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter referred to as the "NDPS Act, 1985") was enacted for exercising better statutory control over drugs. It repealed the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930 which had become out-dated in the context of then prevailing situation in the field of illicit drug traffic and drug abuse at the national and international level. The NDPS Act, 1985 was followed by the enactment of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereafter referred to as the "PITNDPS Act, 1988"). The provisions of the Drugs and
Cosmetics Act, 1940, supplement the provisions of the NDPS Act, 1985, in the matter of control over manufacture and supply of some drugs. A brief outline of these Acts is presented below:

The NDPS Act, 1985

The principal objectives behind enacting the NDPS Act, 1985 were:

i) To provide for deterrent punishment for the persons indulging in illicit drug trafficking as the maximum term of imprisonment under previous Acts extended to 3 years only (4 years in case of repeat offences), and the international drug smugglers had started operating from India in view of such lax laws;

ii) To broaden the enforcement base by conferring power of investigation of drug-related offences also on a number of Central enforcement agencies like customs, central excise, narcotics, revenue intelligence etc;

iii) To fulfil the international obligations under various international treaties and conventions to which India was a party;

iv) To bring the new drugs of addiction i.e. psychotropic substances under strict statutory control in the manner as envisaged in the Convention on Psychotropic Substances, 1971 which had been acceded to by India in 1975.
The NDPS Act, 1985 came into force on 14th November, 1985. It had originally six chapters only but two new chapters i.e. Chapter II A and Chapter VA were inserted later into the Act by the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 with effect from 29th May, 1989.

Chapter I of the NDPS Act, 1985 deals primarily with the short title and definitions. Chapter II relates to the appointment of authorities and officers who are to exercise powers and perform various functions under the Act. The provisions in this Chapter also authorise the Central Government to constitute an advisory committee to be called 'The Narcotic Drugs and Psychotropic Substances Consultative Committee' to advise the Central Government on matters relating to the administration of the Act. Chapter II A deals with the constitution of the National Fund for Control of Drug Abuse. The Fund is supposed to receive budgetary grants from the Central Government, and is also open to contributions by private persons or institutions. The sale proceeds of any property forfeited under Chapter VA are also to be credited to the Fund. The Fund is to be utilized by the Central Government to meet the expenditure in combatting with drug abuse and illicit trafficking. Due to lack of infrastructure and financial allocations, the Fund is yet to become functional although it was formally constituted on the 29th May, 1989.
Chapter III of the Act contains prohibitions relating to the cultivation of coca, opium, poppy and cannabis plants, and the production, manufacture, possession, sale, purchase and consumption etc. of any narcotic drug or psychotropic substance contrary to the provisions of the Act. An innovative provision inserted by the NDPS (Amendment) Act, 1988 in this Chapter authorises the Central Government to prohibit or regulate the production, manufacture, supply, distribution, trade or commerce in any substance which by itself is not a narcotic drug or psychotropic substance but can be used in the manufacture of a narcotic drug or psychotropic substance. Acetic Anhydride, for example, is a common industrial chemical also used in the manufacture of heroin, and is illegally exported to Myanmar.

Offences and penalties are dealt with in Chapter IV of the Act. Broadly speaking, almost all drug-related offences are punishable with rigorous imprisonment for a term which is not to be less than ten years but which may extend to twenty years. The convicted person is also liable to a minimum fine of Rs. One lakh which may extend to Rs. Two lakhs. The court also has the power, for reasons to be recorded in the judgement, to impose a fine exceeding two lakh rupees. However, if an offender had been convicted previously, he has to be awarded a minimum sentence of rigorous imprisonment for fifteen years and a fine of Rs. 1.5 lakhs. The maximum sentence in such cases can extend up to rigorous imprisonment for thirty years and a fine up to Rs. 3 lakhs. By the NDPS (Amendment) Act, 1988, a new
section, namely, Sec. 31A was inserted in the Chapter in order to prescribe death penalty for an offender who has been convicted previously and who has again committed an offence involving a drug whose quantity equals or exceeds the quantities specified in the said section.

Lenient punishments have been provided in the Act for the addicts. The maximum sentence extends to imprisonment for one year or fine or both, for offences in respect of certain specified drugs, and to a maximum imprisonment for six months with or without fine in case of other drugs. The addict can also be given an option to undergo compulsory treatment in lieu of the sentence. An addict who volunteers to undergo medical treatment may not be prosecuted but this concession is available only once in addict's lifetime.

All the offences under the Act are triable only by the Special Courts constituted under Section 36. Wherever such courts are yet to be constituted, the offences are triable by a Court of Session only.

Chapter V of the Act deals with the statutory procedures relating to search, seizure, arrest and other matters.

Chapter VA was inserted by the NDPS (Amendment) Act, 1988 to provide for the forfeiture of property derived from, or used in, illicit traffic in drugs. The Chapter also lays down the procedure for identification, seizure or freezing, and forfeiture of illegally acquired property.

Chapter VI deals with the miscellaneous matters. It casts an obligation on the Central Government and State Governments to take international conventions, to which India is a party, into consideration while framing Rules
under the Act. The Chapter also provides for the establishment of centres for identification, treatment, education, aftercare, rehabilitation and social re-integration of the addicts.

The Drugs and Cosmetics Act, 1940

The Drugs and Cosmetics Act, 1940 had been enacted to regulate the import, manufacture, distribution and sale of drugs. The term 'drug' as appearing in this Act does not have the same definition and meaning which it has under the NDPS Act, 1985, for the reason that while the Drugs and Cosmetics Act, 1940 is concerned mainly with the quality of medicines and substances used for treatment, mitigation or prevention of diseases, the NDPS Act, 1985 is aimed at preventing the abuse of addictive drugs. As some narcotic drugs and psychotropic substances are used for genuine medical purposes, and hence are regulated also by the Drugs and Cosmetics Act, 1940, Section 80 of the NDPS Act, 1985 stipulates that "the provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 or the rules made thereunder". Thus, there is no conflict between the two statutes.

Rules 65 and 66 of the Narcotic Drugs and Psychotropic Substances Rules specifically attract the provisions of the Drugs and Cosmetics Act, 1940. Rule 65 of the said Rules prohibits manufacture of any psychotropic substance contrary
to the conditions of a licence granted under the Drugs and Cosmetic Rules, 1945 framed under the Drugs and Cosmetics Act, 1940. Rule 66 of the NDPS Rules prohibits possession of any psychotropic substance by any person unless he is lawfully authorised to possess such substance under the Drugs and Cosmetics Rules, 1945.

The PITNDPS Act, 1988

Before the enactment of this Act, the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974 (COFEPOSA Act, 1974) were invoked for preventive detention of persons involved in the smuggling of drugs. However, as many acts of illicit trafficking such as illegal cultivation of narcotic plants do not fall within the scope of 'smuggling', it was considered necessary to enact a separate law covering all aspects of such trafficking. Under this Act, a person can be detained ordinarily for a period of one year subject to confirmation of the detention order by the Advisory Board.

To sum up, drug abuse is increasing in the country at a frightening pace with the number of addicts having gone beyond 25 lakhs at present. The anti-drug laws have failed so far to make any visible impact on the drug scenario. Therefore, there is a need to combat this problem on a war-footing.
NOTES


11. Ibid.


17. Id.

18. The system is described later in this Chapter.


23. Supra note 15.


26. This aspect is discussed later in this Chapter.

27. See, Reports of the International Narcotic Control Board, Vienna, for the relevant years. See also, Narcotic Drugs—Estimated World Requirements for 1992, New York: United Nations, 1991, pp. 41-43; and notes 35, 36, 39, 41 and 45 below.

28. Id.

29. Id.

30. Id.

31. Id.

32. See, notes 35, 38, 42 and 45 below.

33. See, notes 35, 36, 38, 39, 41, 42, 44 and 45 below.

34. Id.


37. Note 35 supra, and notes 38, 42 and 45 below.


40. Id.


43. In Australia, which too is allowed by the United Nations to grow poppy for meeting the medical requirements, the poppy straw concentrate is used directly, without extraction of opium, for manufacture of morphine. In India, the opium is first obtained by periodic lancing of the poppy capsule, and then this opium is used for extraction of various alkaloids. The advantage of Indian system over the Australian system is that while all alkaloids can be extracted by processing of opium, extraction of very few alkaloids is possible directly from the poppy straw concentrate.


47. Romesh Bhattacharjee, 'Not all Poppycock', The Pioneer, New Delhi, 27 December 1992. See also, note 39 supra.

48. The estimated number of drug abusers in India is discussed later in this chapter.


51. Data is based on the sources indicated in note 7 supra.

52. See note 8 supra.


56. Supra note 9.


59. Id.


63. Union Minister for Health and Family Welfare reportedly stated at Kochi on 13 January 1992 that a sense of false security, due to the feeling that a transit country like India would not be touched by the adverse effects, had already caused tremendous damage. *The Hindu*, Madras, 14 January 1992.


68. Fuqua, op. cit., p. 20.


70. Quoted in Menon, op. cit., pp. 59-60.


73. Supra note 9.

74. Teff, op. cit., p. 65.

75. Ibid. p. 53.


79. Supra note 8.


82. Many insurgent groups in Myanmar e.g. Shan United Army are reported to be currently engaged solely in drug trafficking.


85. Discussed in Chapters III, IV and V of this work.

86. See Chapter VIII of this work.

87. See Chapter VI of this work.

88. Details in Chapter III of this work.


94. Supra note 9.

95. Supra note 65.


101. Supra note 9.


103. Id.

104. Id.


106. Id.


